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No. 238

In the Supreme Court of the United States

OCTOBER TERM, 1958

WILSON H. WALTERS, CHARLES P. CAIN, AND KEITH TERRY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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The judgment of the Court of Appeals was entered on April 11, 1958 (Pet. 9A; Vol. VII 1422). On June 26, 1958, an order was entered denying a timely filed petition for rehearing (Pet. 10A; Vol. VII 1423). Petitioners filed their record and petition in this Court on July 30, 1958 (the 34th day). On July 31, 1958 (the 35th day), petitioners applied for an extension of time within which to file the petition for writ of certiorari. On August 4, 1958, Mr. Justice William O. Douglas signed an order extending the time to file the petition for a writ of certiorari to July 30, 1958. The jurisdiction of this Court is sought to be invoked under 28 U. S. C. 1254 (1).

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Since petitioners had only 30 days from June 26, 1958, to file their petition under Rule 37 (*e*) of the Federal Rules of Criminal Procedure and Rule 22 (2) of the Rules of the Supreme Court, they are clearly late in attempting to file on the 34th day, or July 30, 1958.

The application for an extension having been presented on the 35th day was also out of time and therefore the order of August 4, 1958, was ineffective to confer jurisdiction. Rule 34 (2) of the Rules of the Supreme Court. See *Carleton Screw Products Co.* v. *Fleming*, 317 U. S. 634, discussed in Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States* (Revised by Wolfson and Kurland, 1951 ed.), section 415, p. 829, fn. 4. See, also, *Overfield* v. *Pennroad Corp.* (order of Mr. Justice Burton vacating prior order of extension) discussed *ibid.*, Appendix B, p. 946, fn. 19.

J. LEE RANKIN,
Solicitor General.

AUGUST 1958.